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PUBLIC VERSION

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TO : All Port Directors
All Assistant Port Directors
Directors, Field Operations

FROM : Assistant Commissioner
Office of Field Operations

SUBJECT: Modifications to Rules Governing Importation of Tobacco
Products and Cigarettes

BACKGROUND:

On November 9, 2000, the President signed the "Tariff Suspension and Trade Act of 2000" into law (Public Law 106-476). Title IV of this law is known as the "Imported Cigarette Compliance Act of 2000." This new law amended Sections 5754, 5704 & 5761 of Title 26 of the Internal Revenue Code (Restrictions on Importation of Previously Exported Tobacco Products), and added a new title, Title VIII to the Tariff Act of 1930 (19 U.S.C. 1202 et seq.) relating to the importation of cigarettes into the United States. In addition, on December 21, 2000, Congress passed the Consolidated Appropriations Act of 2001 (Public Law 106-554), which also amended 26 U.S.C. 5761.

I. The rules governing the importation of cigarettes and tobacco products under 26 U.S.C 5754. Restrictions on Importation of Previously Exported Tobacco Products and Other Conforming Amendments:

A. Export-labeled tobacco products:

- (1) **In general**, tobacco products and cigarette papers and tubes manufactured in the U.S. and labeled for exportation under this section require that such tobacco products:
 - (a) may be transferred to or removed from the premises of a manufacturer or an export warehouse proprietor only if such articles are being transferred or removed without tax in accordance with section **5704** as described below.

[26 U.S.C. 5704. Exemption from Taxes (ATF Regulations)] states the following:

- (a) Tobacco products furnished for employee use or experimental purposes.

Tobacco products may be furnished by a manufacturer of such products, without payment of tax, for use or consumption by employees or for experimental purposes, in such quantities, and in such manner as the Secretary by regulation shall prescribe. [See ATF regulations – 27 CFR Part 270].

- (b) Tobacco products and cigarette papers and tubes transferred or removed in bond from domestic factories and export warehouses. A manufacturer or export warehouse proprietor may transfer tobacco products and cigarette papers and tubes, without payment of tax, to the bonded premises of another manufacturer or export warehouse proprietor, or remove such articles, without payment of tax, for shipment to a foreign country, Puerto Rico, the Virgin Islands, or a possession of the United States, or for consumption beyond the jurisdiction of the internal revenue laws of the United States; and manufacturers may similarly remove such articles for use of the United States; in accordance with such regulations and under such bonds as the Secretary of Treasury shall prescribe. Tobacco products and papers and tubes may not be transferred or removed under this subsection unless such products or papers and tubes bear such marks, labels, or notices as the Secretary shall prescribe. [See ATF regulations at 27 CFR 290.184, 290.185, and 290.2222 for export (see section 1(b)) and at 27 CFR 295.41-64 for use of the United States].

- (c) Tobacco products and cigarette papers and tubes released in bond from Customs custody. Tobacco products and cigarette papers and tubes, imported or brought into the United States, may be released from customs custody, without payment of tax, for delivery to the proprietor of an export warehouse, or to a manufacturer of tobacco products or cigarette papers and tubes if such articles are not put up in packages, in accordance with such regulations and under such bond as the Secretary shall prescribe. [See ATF regulations at 27 C.F.R. 275.85 and .86].

- (d) Tobacco products and cigarette papers and tubes exported and returned. Tobacco products and cigarette papers and tubes classifiable under item 804.00 of title I of the Tariff Act of 1930 (relating to duty on certain articles previously exported and returned) may be released from customs custody, without payment of that part of the duty attributable to the internal revenue tax for delivery to **the original manufacturer** of tobacco products or cigarette papers and tubes or to the proprietor of an export warehouse, **authorized by such manufacturer to receive such articles**, in accordance with such regulations and under such bond, **as the Secretary shall prescribe**. [See ATF regulations at 27 CFR 275.82, .85a and .86]. Upon such release such products, papers, and tubes shall be subject to this chapter as if they had not been exported or otherwise removed from internal-revenue bond. (**Note:** The manufacturer and export warehouse proprietors are regulated by ATF and are required to have a bond to cover Internal Revenue taxes. The bond is issued under the Internal Revenue Code.)]

- (b) may be imported or brought into the U.S., after their exportation, only if such articles either are eligible to be released from Customs custody with partial duty exemption provided in section 5704(d) or are returned to the original manufacturer of such article as provided in section 5704(c); and

- (c) may not be sold or held for sale for domestic consumption in the U.S. unless such articles are removed from their export packaging and repackaged by the original manufacturer into new packaging that does not contain an export label.
- (2) **Alterations by Persons Other Than the Original Manufacturer** – This section applies to articles labeled for export even if the packaging or the appearance of such packaging to the consumer of the article has been modified or altered by a person other than the original manufacturer so as to remove, conceal or attempt to remove or conceal (including the placement of a sticker over) any export label.
- (3) **Exports Include Shipments to Puerto Rico** – For purposes of section 5754, 5704(d), 5761 and other provisions that make reference to exportation shall be treated as including a reference to shipment to the Commonwealth of Puerto Rico.

B. **Export Label** - Tobacco products and cigarette papers and tubes may not be transferred or removed under this subsection unless the products or papers and tubes bear marks, labels, or notices as described under the Bureau of Alcohol, Tobacco and Firearms (ATF) regulations at 27 C.F.R. 290.184, 290.185 and 290.222. Every package of tobacco products, intended for export, must be marked with the words:

“Tax-exempt. For use outside U.S.”; or
“U.S. Tax-exempt. For use outside U.S.”; or
A stamp, sticker or notice required by a foreign country or a possession of the United States, which identifies such country or possession; or
“For Export with Drawback of Tax.”

C. **Requirement to destroy forfeited tobacco products** –

- (1) On or after **February 7, 2001**, 26 U.S.C. 5761(c) imposes a civil penalty (which will be assessed by ATF) against any person that sells, relands, or receives previously exported tobacco products, or cigarette papers and tubes within the jurisdiction of the U.S. such products shall be forfeited to the U.S. and destroyed. In addition, all vessels, vehicles, and aircraft used in such relanding or in removing such products, papers and tubes from the place where relanded, shall be forfeited to the U.S.
- (2) This section does not apply to any personal traveler, who claims and is granted an exemption for tobacco products in the quantity

allowed entry free of tax and duty under chapter 98 of the Harmonized Tariff Schedule of the U.S. (HTSUS). No quantity of tobacco products other than the quantity referred to in the preceding sentence may be relanded or received as a personal use quantity (See Section I under “**Action**” below).

II. The following are new import requirements governing the importation of cigarettes under the Tariff Act of 1930 as revised by the Imported Cigarette Compliance Act of 2000:

A. **As a general rule**, except as provided for in subsection (b), cigarettes may be imported into the U.S. only if:

- (1) the original manufacturer of those cigarettes has timely submitted, or has certified that it will timely submit, to the Secretary of Health and Human Services the lists of the ingredients added to tobacco in the manufacture of such cigarettes as described in Section 7 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1335a);
- (2) the precise warning statements in the precise format specified in section 4 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333) are permanently imprinted on both:
 - (a) the primary packaging of all cigarettes;
 - (b) any other pack, box, carton or container of any kind in which those cigarettes are to be offered for sale or otherwise distributed to consumers;
- (3) the manufacturer or importer of those cigarettes is in compliance with respect to those cigarettes being imported into the U.S. with a rotation plan approved by the Federal Trade Commission pursuant to section 4(c) of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333(c));
- (4) if such cigarettes bear a U.S. trademark registered for such cigarettes, the owner of such U.S. trademark registration for cigarettes (or a person authorized to act on behalf of such owner) has consented to the importation of such cigarettes into the U.S.; and
- (5) the importer has submitted, at the time of entry, all of the certificates described in Section II of the “**Action**” portion of this document.

B. **Exemptions** – Cigarettes satisfying the conditions of any of the following paragraphs will not be subject to the requirements of subsection (a):

- (1) **Personal-Use Cigarettes** – Cigarettes that are imported into the U.S. in personal use quantities in cases in which the traveler has claimed and has been granted an exemption for entry free of tax and duty under chapter 98 of the HTSUS (See “**Action**”, Section I);
- (2) **Cigarettes imported into the U.S. for analysis** – Cigarettes that are imported into the U.S. solely for the purpose of analysis in quantities suitable for such purpose, but only if the importer submits, at the time of entry, a certificate signed under penalties of perjury, by the consignee (or person authorized by such consignee) providing such facts to establish that the consignee is a manufacturer of cigarettes, a Federal or State government agency, a university, or is otherwise engaged in bona fide research and stating that the cigarettes will be used solely for analysis and will not be sold in domestic commerce in the U.S.
- (3) **Cigarettes intended for noncommercial use, re-export, or repackaging:**
 - (a) Cigarettes for which the owner of such U.S. trademark registration for cigarettes (or a person authorized to act on behalf of such owner) has consented to the importation of such cigarettes into the U.S.; and
 - (b) cigarettes for which the importer submits a certificate, signed by the manufacturer or export warehouse proprietor (or a person authorized by such manufacturer or export warehouse proprietor) to which such cigarettes are to be delivered (as provided for in subparagraph (A)) stating, under penalties of perjury, with respect to those cigarettes, that it will not distribute those cigarettes into domestic commerce unless prior to such distribution all steps have been taken to comply with paragraphs (1), (2), and (3) of subsection (a) and to the extent applicable, section 5754(a)(1) (B) and (C) of the Internal Revenue Code of 1986.

NOTE: If a manufacturer or export warehouse has a permit from ATF and would like to move the cigarettes in bond, then the importer must provide an ATF Form 5200.11, (Notice of Release of Tobacco Products, Cigarette Papers or Cigarette Tubes) that is signed by an ATF official.

C. Any tobacco product, cigarette papers or tubes that was imported into the U.S. or, is sought to be imported, into the U.S. in violation of, or without meeting the requirements of this section, will be seized under the provisions of 19 U.S.C. 1595a(c) or 26 U.S.C. 5761 (NOTE: 26 U.S.C. 5761 provides for forfeiture only). Notwithstanding any other provision of law, any product forfeited to the U.S. pursuant to this section will be destroyed.

ACTION:

The following are operational procedures required to enforce the amendments to the laws identified above:

I. Restrictions on Importations of Previously Exported Tobacco Products

A. Commercial Importations:

For purposes of this section, please note that this law is administered by the Bureau of Alcohol, Tobacco and Firearms (BATF). The United States, under ATF regulations, is defined as constituting the 50 states and the District of Columbia; it does not apply to Puerto Rico, Virgin Islands or a possession of the United States (for example, Guam). 27 CFR 275.1 defines importation as "tobacco products and cigarette papers and tubes imported into the United States from a foreign country or brought into the United States from Puerto Rico, the Virgin Islands or a possession of the United States..."

Effective February 7, 2001, the only condition under which commercial shipments of previously exported tobacco products, cigarette papers and tubes may be imported or brought into the U.S., is by release from Customs custody, without payment of tax, for transfer ***to the original manufacturer*** of tobacco products, cigarette papers and tubes, or to an export warehouse proprietor holding a permit issued from ATF. (**NOTE:** This law previously did not require the tobacco products, cigarette papers and tubes to be transferred to the original manufacturer. It allowed the goods to be transferred to any manufacturer of tobacco products.)

To obtain release from Customs custody for entry into the U.S., the original manufacturer or export warehouse proprietor must possess an ATF Form 5200.11 (formerly ATF Form 2145), entitled, "Notice of Release of Tobacco Products, Cigarette Papers, or Cigarette Tubes," that is certified by an ATF official (27 CFR 275.86).

A copy of the ATF Form 5200.11 must be signed by an ATF officer, submitted at the time of entry and attached to the entry package. ATF Form 5200.11 certifies that the shipment of tobacco products, cigarette papers or tubes is going to a tobacco products manufacturer or export warehouse proprietor.

B. Personal-use quantity exemption:

- (1) Passengers/travelers may import previously exported (restricted) tobacco products only in quantities not exceeding the amounts specified in exemptions for which the traveler qualifies. Any quantities of restricted tobacco products not permitted by an exemption will be seized and destroyed. These items are typically purchased in Duty Free Stores, on carriers operating internationally, or in foreign stores. These items are usually marked "Tax Exempt. For Use Outside the U.S.," or "U.S. Tax Exempt For Use Outside the U.S."

For example, a returning resident, if she/he claims and is granted an exemption, is eligible for the \$400 exemption, which may include 200 cigarettes. If the resident declares 400 previously exported cigarettes, the resident would be permitted 200 cigarettes, tax-free under the exemption and the remaining 200 cigarettes would be seized. If a returning resident is eligible for the \$400 exemption and declares 400 cigarettes, of which 200 have been previously exported and 200 which have not been previously exported, the resident would be permitted to import the 200 previously exported cigarettes tax free under the exemption and the resident would be charged duty and tax on the remaining 200 cigarettes.

II. Imported Cigarette Certification Requirement:

A. Effective December 9, 2000, the importer must submit a certificate, at the time of entry (attached to the entry package), for each shipment of cigarettes as described below:

- (1) a certificate signed by the manufacturer of the particular shipment, or an authorized official of the manufacturer, stating that under penalties of perjury, with respect to the shipment of cigarettes, that the manufacturer has timely submitted, and will continue to submit timely, to the Secretary of Health and Human Services, the ingredient reporting information required by section 7 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1335a);

- (2) a certificate signed by the importer, or an authorized official of the importer stating under penalties of perjury that:

the precise warning statements in the precise format required by section 4 of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333) are permanently imprinted on both:

- [i] the primary packaging of all cigarettes contained in the shipment; and
- [ii] any other pack, box, carton, or container of any kind in which those cigarettes are to be offered for sale or otherwise distributed to consumers; and
- [iii] one of the following labels:

(Section 1333 (a)(1) states that, "It shall be unlawful for any person to manufacture, package, or import for sale or distribution within the United States any cigarettes the package of which fails to bear, in accordance with the requirements of this section, one of the following labels):

- SURGEON GENERAL'S WARNING: Smoking Causes Lung Cancer, Heart Disease, Emphysema, And May Complicate Pregnancy.
- SURGEON GENERAL'S WARNING: Quitting Smoking Now Greatly Reduces Serious Risks to Your Health.
- SURGEON GENERAL'S WARNING: Smoking By Pregnant Women May Result in Fetal Injury, Premature Birth, And Low Birth Weight.
- SURGEON GENERAL'S WARNING: Cigarette Smoke Contains Carbon Monoxide.

NOTE: The Surgeon General's Warning label must be located underneath the innermost cellophane or other transparent wrapping and labels, if any. Warnings or other statements shall be deemed 'permanently imprinted' only if printed directly on such primary packaging and not by way of stickers or other similar devices. In addition, the 'SURGEON GENERAL'S WARNING' portion of the label must be in all capital letters.

With respect to those cigarettes being imported into the U.S., the importer has complied, and will continue to comply, with a rotation plan approved by the Federal Trade Commission pursuant to section 4(c) of the Federal Cigarette Labeling and Advertising Act (15 U.S.C. 1333(c)); and

U.S. Code Title 15, Section 1333(c) requires that cigarette manufacturers and importers rotate the four mandated Surgeon General's warning labels on cigarette packaging in accordance with a plan filed and approved by the FTC, prior to importation into the U.S.

- (3) If cigarettes bear a U.S. registered trademark, a certificate signed by the owner of the trademark for cigarettes (or a person authorized to act on behalf of the owner), stating that under penalties of perjury that the owner (or authorized person) consents to the importation of such cigarettes into the U.S.; and
- (4) a certificate signed by the importer or an authorized official of the importer stating that under penalties of perjury that the consent referred to in subparagraph (A) is accurate, remains in effect and has not been withdrawn.

Shipments of cigarettes that are not accompanied by the applicable certificates reflected above are subject to seizure and forfeiture in accordance with 19 U.S.C. 1595(a)(c).

Persons attempting to enter or introduce products in violation of these provisions, through a false statement, act or omission, are subject to a penalty under applicable law, as well as to having the goods seized under 19 U.S.C. 1595a(c). Under 26 U.S.C. 5761, the penalty for each violation is equal to the greater of \$1,000 or 5 times the amount of the applicable taxes on all tobacco products (including cigarettes) or cigarette papers and tubes involved in the violation.

IN SUMMARY:

The following is a reference guide to assist inspectors and import specialists with the new import requirements, effective immediately for cigarettes and tobacco products discussed in the memorandum:

PRODUCT

-Previously exported tobacco products or cigarette papers and tubes.

IMPORT REQUIREMENT

At the time of entry, the ATF Form 5200.11 signed by an ATF official is required.

Personal exemption: If the cigarettes have been manufactured and labeled for exportation in the United States (previously exported cigarettes), passengers/travelers may only import 200. The remaining cigarettes must be confiscated (See Section, Action I. Personal Use Quantity Exemption).

-Cigarettes that **do not** bear a U.S. Registered trademark.

At the time of entry, the following **3**, signed certificates are required:

1. A certificate referring to compliance with section 7 of the Federal Cigarette Labeling and Advertising Act administered by the Health and Human Services.
 2. A certificate referring to compliance with the Federal Cigarette Labeling and Advertising Act, Surgeon General's Warning Label Administered by the Federal Trade Commission.
 3. A certificate referring to compliance with the Federal Cigarette Labeling and Advertising Act, Surgeon General's Warning Label rotation plan.
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-Cigarettes that bear a U.S. registered trademark.

-In addition to the **3** certificates reflected above, importers must provide the following **2** additional certificates at the time of entry:

4. A certificate signed by the trademark holder (or authorized representative) consenting to the importer's use of trademark.
5. A certificate from the importer stating that the consent is accurate, remains in effect and has not been withdrawn.

INFORMATION:

Questions regarding information provided in this document should be referred to the local Customs Port of Entry.